

Appl. No. 10/092,082
Reply to Office Action of June 3, 2005

Docket No. BAMB-007AUS

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the remarks below.

Pending claims 13, 14 and 16-37 are pending in the application and are rejected.

Applicant thanks the Examiner for the courtesy extended to the undersigned and inventor Michael Cotto during an interview conducted at the USPTO on August 23, 2005. During the interview the prior relied upon to reject the claims was discussed. No agreement was reached.

The Prior Art Rejections

Claims 13 and 17 are rejected under 35 U.S. C. §103 over U.S. Patent No. 2,574,932 to Nohl in view of U.S. Patent No. 123,369 to Stearns.

Claim 13 requires a grading rake having a plurality of linear tines extending from the rake head for grading particulate matter, wherein an interior angle between the plurality of tines and the handle is fixed and ranges from about thirty degrees to about sixty degrees. The grading rake further requires that the tines include a truncated end surface forming an angle with a longitudinal axis of the handle ranging from about plus ten degrees to negative ten degrees.

In contrast Nohl discloses an ear corn rake having particular features to separate tightly packed corn ears prior to shucking and shelling. The tines 12 have "outward surfaces beveled in a manner to provide knife-like cutting edges." (Col. 2, lines 4-5). By beveling the "outward" surfaces, the tines facilitate "riding easily over the ears of corn" as the rake is worked away from the user and provide "cutting edges" as the rake is worked toward the user. Nohl further teaches that tines are "slightly canted in a direction toward the handle, and the degree of angularity is usually about 83°." (col. 3, lines 54-57).

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Stearns teaches a hand rake having "the proper degree of declination of the rake-handle with the rake-teeth." The Examiner asserts that "Stearns teaches and clearly illustrates it is known to dispose rake-tines at approximately a 60° angle relative to the handle."

Applicant respectfully submits that the combination proposed by the Examiner does not teach the invention as claimed. Neither Nohl nor Stearns teach tines that "include a truncated end surface forming an angle with a longitudinal axis of the handle ranging from about plus ten degrees to negative ten degrees," as required by claim 13.

Further, Applicant submits that the Examiner has impermissibly used hindsight to locate claim features in various references and combine them using Applicant's disclosure as a roadmap. Applicant submits that the rake taught by Nohl has particular features required for separating tightly packed corn. The beveled surfaces provide "knife-like" cutting edges based upon the steep angle of the bevel with respect to the handle. In contrast, the claimed grading rake does not provide cutting surfaces. Rather, claim 13 requires that the tine truncated end surfaces form "an angle with a longitudinal axis of the handle ranging from about plus ten degrees to negative ten degrees." This arrangement "engages large particles in the material" as the "user draws the rake back," as discussed on page 4 of the present specification. Applicant submits that altering the bevel angle of the tines in Nohl as proposed renders the rake useless for its intended purpose to separate corn ears.

In addition, Nohl teaches that the tines are "slightly canted" with respect to the handle, i.e., 83 degrees. Stearn teaches a conventional angle for rake tines with respect to the handle. Again, altering the angle of the tines of the Nohl rake as required in the proposed combination renders the corn rake of Nohl useless for separating corn ears.

Since modifying Nohl with Stearns as proposed would render Nohl unsuitable as an ear corn rake, clearly one of ordinary skill in the art would not be motivated to combine the references as required to properly establish prima facie obviousness.

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For at least the reasons discussed above, Applicant submits that claims 13, 14 and 16-37 are patentably distinguishable over the cited references.

Claims 14, 16, 18-20, 22, 24, 25, and 27 are rejected as being obvious over Nohl and Stearns and further in view of Milbury. Claim 21 is rejected as being obvious over Nohl, Stearns, Milbury and further in view of Fuller, claim 23 is rejected as being obvious over Nohl, Stearns, Milbury, and further in view of Judy, and claim 26 is rejected as being obvious over Nohl, Stearns, Milbury, and further in view of Guidarelli.

For at least the reasons discussed above with respect to claim 13, Applicant respectfully submits that claims 14, 16, 18-20, 22, 24, 25, and 27 are allowable over the cited art.

Claims 28, 29, and 31-34 are rejected as being obvious over Milbury in view of Stearns.

Claim 28 requires a grading rake including a plurality of linear tines extending from the rake head, wherein an interior angle between the plurality of tines and the handle ranges from about thirty degrees to about sixty degrees. The plurality of tines include a truncated end surface forming an angle with the handle ranging from about plus ten degrees to negative ten degrees.

With regard to Milbury, Applicant points out that angle A is clearly limited to an obtuse angle. This feature is introduced as an "obtuse angle A is shown" at col. 11, line 1. Milbury goes on to explain at col. 11, line 5-6, that for "efficient performance of lawn rake 100 in raking action, angle A ranges from approximately 130° to 170°." And further at col. 1, line 10, "[d]ue to the geometry established by obtuse angle A, angle B is necessarily larger than angle C." It is clear that these relationships *require* that angle A be an obtuse angle.

Since Stearns merely discloses a conventional acute angle between rake tines and a rake handle, modifying Milbury as proposed renders it unsuitable for its intended purpose and contrary to the structure required by Milbury's disclosure.

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Thus, it is clear that Milbury cannot be properly combined with references teaching non-obtuse angles. Moreover, Milbury is a lawn rake having no utility as a grading rake, as claimed.

As noted above, Applicant submits that it is not permissible for the Examiner to merely search the prior art using Applicant's disclosure as a roadmap in an attempt to identify claimed features and then assert that the invention is obvious. This is an impermissible use of hindsight in an unsupportable determination of obvious. As the Examiner is well aware, there must be some identifiable motivation to combine Milbury and Stearns as proposed.

In view of the above, Applicant submits that claim 28, and claims depending from 28, are patentably distinguishable over the cited art.

Claims 30, 35, 36, and 37 are rejected as being obvious over various combinations of Milbury, Stearns, Nohl, Judy, and Guidarelli. For substantially the same reasons discussed above, Applicant submits that these claims are allowable over the art of record.

In view of the above, Applicant submits that the pending claims are patentably distinguishable over the cited references. Accordingly, a notice of allowance is respectfully requested.

The Examiner is respectfully invited to telephone the undersigning attorney if there are any questions regarding this Amendment or this application.

Applicant does not acquiesce to any assertion made by the Examiner and not specifically addressed herein.

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The Assistant Commissioner is hereby authorized to charge payment of any additional fees associated with this communication or credit any overpayment to Deposit Account No. 500845.

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Respectfully submitted,

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